

1 TERINA WILLIAMS (STATE BAR NO. 267617)
2 SOUTHWORTH PC
3 1100 Peachtree Street NE
4 Suite 200
5 Atlanta, GA 30309
6 Telephone: (404) 585-8095
7 Facsimile: (404) 393-4129
8 E-mail: terina@southworthpc.com

7 Attorneys for Plaintiff
8 ALINA KORSUNSKA

9
10 UNITED STATES DISTRICT COURT
11
12 CENTRAL DISTRICT OF CALIFORNIA

13 ALINA FORSUNSKA,

) Case No.: CV13-7010 CAS (AJWx)

14 Plaintiff,

)

15 vs.

) **PLAINTIFF ALINA**
16 **KORSUNSKA'S L.R. 56-2**
17 **STATEMENT OF GENUINE**
18 **DISPUTES OF MATERIAL FACT**
19 **IN OPPOSITION TO FEDERAL**
20 **DEFENDANT'S MOTION FOR**
21 **SUMMARY JUDGMENT**

Federal Defendant.

)

) Hearing Date: July 28, 2014
22) Hearing Time: 10:00 a.m.
23) Courtroom: 5 – 2nd Floor

)
24) Hon. Christina A. Snyder
25) U.S. District Court Judge

1 Plaintiff Alina Korsunska, by and through counsel and pursuant to Local
 2 Rule 56-2, hereby respectfully submit this Statement of Genuine Disputes of
 3 Material Fact in response to Federal Defendant's Separate Statement of
 4 Uncontroverted Facts lodged concurrently with its Motion for Summary Judgment.

5 In this Statement, Plaintiff responds to each of the "undisputed material
 6 facts" identified in Federal Defendant's Separate Statement of Undisputed Facts.
 7 These facts are followed by additional material facts and supporting evidence also
 8 showing genuine issues.

9 Citations to exhibit letters refer to Plaintiff's evidentiary appendix in her
 10 opposition to Federal Defendant's Motion for summary judgment.

UNCONTROVERTED FACT & SUPPORTING EVIDENCE	PLAINTIFF'S RESPONSE & SUPPORTING EVIDENCE
13 1. Plaintiff Alina Korsunska began 14 working for the U.S. Citizenship 15 and Immigration Services, a 16 component of the U.S. Department 17 of Homeland Security ("DHS"), in 18 August 2008. Plaintiff's 19 employment with DHS was 20 terminated in October 2009.	Undisputed.
21 2. In January 2010, Plaintiff filed an 22 Equal Employment Opportunity 23 ("EEO") complaint against DHS 24 alleging that her termination was 25 predicated on discriminatory 26 animus.	Undisputed.
27 3. In June 2010, Plaintiff and DHS 28 entered into a non-monetary 29 settlement agreement. In exchange 30 for the dismissal of Plaintiff's EEO 31 action, DHS agreed to re- 32 characterize Plaintiff's termination	Undisputed.

<p>1 as a resignation and to provide a 2 neutral reference to potential 3 employers regarding Plaintiff's job 4 performance with the agency.</p>	
<p>5 4. Plaintiff began the EEO 6 administrative process by sending a 7 letter to the DHS Office for Civil 8 Rights and Civil Liberties ("DHS- 9 OCR") on January 17, 2011. 10 Plaintiff inadvertently dated her 11 letter January 17, 2010, rather than 12 January 17, 2011.</p>	<p>Disputed In Part. Objection: Irrelevant. 13 Plaintiff does not dispute that she sent 14 a letter to the DHS-OCR on January 15 17, 2011 or that she inadvertently 16 dated her letter January 17, 2010, 17 rather than January 17, 2011. 18 However Plaintiff disputes the 19 contention that this letter is the 20 beginning of the EEO administrative 21 process for the August 15, 2011 22 formal complaint (which is the 23 foundation of the Complaint before 24 this Honorable Court). Rather 25 Plaintiff began the EEO 26 administrative process for the August 27 15, 2011 formal complaint on July 8, 2011 when she informed the USCIS 2011 EEO that she was being retaliated 2012 against because of her prior protected 2013 activity which she learned when she 2014 discovered a letter from the Social 2015 Security Administration rejecting her 2016 for a position she had applied for. 2017 Therefore the January 17, 2011 letter 2018 is irrelevant. Support 2019 • Korsunski Decl. at ¶ 6 and 8. 2020 • Exhibit E: Indicating that Plaintiff 2021 initiated contact with an EEO 2022 Counselor in July 2011. Note that</p>

	<p>the date listed is incorrect, as Plaintiff initiated contact on July 8, 2011.</p> <ul style="list-style-type: none"> • Exhibit D: Indicating at box 19 that Plaintiff contacted an EEO counselor on July 8, 2011.
<p>5. In the above-referenced letter, Plaintiff alleged that DHS had breached the terms of the parties' 2010 EEO settlement agreement and, moreover, that agency officials had retaliated against her for having engaged in prior protected EEO activities.</p>	<p>Disputed in Part.</p> <p>Objection: Irreverent.</p> <p>Plaintiff does not dispute that in the January 17, 2011 letter she alleged that DHS had breached the terms of the parties' 2010 EEO settlement agreement. However, Plaintiff did not allege that agency officials had retaliated against her for having engaged in prior protected EEO activities. In fact, the words "retaliate," "retaliated," "retaliation" or any other word with similar meaning do not appear in the January 17, 2011 letter. The January 17, 2011 letter focused solely on a claim for breach of settlement agreement. Therefore, the January 17, 2011 letter is irrelevant as it does not concern the retaliation claim she raised in her July 8, 2011 informal complaint and in her August 15, 2011 formal complaint.</p> <p>Support:</p> <ul style="list-style-type: none"> • Korsunskaya Decl. ¶ 6. • Exhibit B.
<p>6. On March 8, 2011, DHS-OCR issued a decision finding that the agency had not breached the terms</p>	<p>Undisputed.</p> <p>Objection: Irreverent.</p>

<p>1 of the parties' agreement nor 2 retaliated against Plaintiff. 3 4 5 6 7</p>	<p>The DHS-OCR's March 8, 2011 decision has nothing to do with Plaintiff's August 15, 2011 formal complaint, which is the foundation for the civil complaint before this Honorable Court. Support: • Korsunskaya Decl. ¶ 6-8. • Exhibit C.</p>
<p>8 9 7. Plaintiff filed a formal EEO 10 complaint on August 21, 2011. In 11 her complaint, Plaintiff alleged that 12 DHS had breached the terms of the 13 parties' 2010 EEO settlement 14 agreement and, moreover, that 15 agency officials had retaliated 16 against her for having engaged in 17 prior protected activities. 18 19 20</p>	<p>Disputed In Part. Plaintiff's Complaint was filed on August 15, 2011. August 21, 2011 is a Sunday, thus the date is obviously wrong. In her August 15, 2011 complaint, Plaintiff alleged that the agency was retaliating against her for her prior protected activity by intentionally failing to provide an appropriate employment reference in conformity with the 2010 settlement agreement. Plaintiff's complaint was not for breach of agreement. Support: • Korsunskaya Decl. ¶ 8. • Exhibit D.</p>
<p>21 22 8. On December 2, 2011, after 23 investigating Plaintiff's claims, 24 DHS-OCR issued a decision finding 25 that the agency had not breached the 26 terms of the parties' EEO settlement 27 agreement nor retaliated against Plaintiff.</p>	<p>Disputed in Part. Plaintiff does not dispute that the DHS-OCR issued a decision on December 2, 2011. However, DHS- OCR issued a decision finding that USCIS's alleged actions did not subject Plaintiff to the requisite harm or loss needed to state a claim</p>

	<p>1 because the Social Security 2 Administration did not hire anyone 3 from the position for which Plaintiff 4 applied but was not selected for. 5</p> <p>Support:</p> <p>6 • Exhibit E.</p>
<p>7</p> <p>8</p> <p>9</p> <p>9. In its December 2011 decision, DHS-OCR advised Plaintiff that she had the right to appeal the agency's decision to EEOC-OFO, which she did on January 6, 2012.</p>	<p>10 Undisputed.</p>
<p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>10. On May 1, 2012, EEOC-OFO issued a decision denying Plaintiff's appeal, thereby rejecting her attempt to assert a retaliation claim against DHS. EEOC-OFO issued Plaintiff's case Appeal Number 0120121106. In its order, EEOC- OFO advised Plaintiff of her right to request reconsideration of its decision or, alternatively, to pursue de novo review in district court.</p>	<p>10 Disputed in Part.</p> <p>11 Plaintiff does not dispute that EEOC- 12 OFO issued a decision on May 1, 13 2012. However, Plaintiff's appeal 14 was not denied. The EEOC-OFO 15 determined that the Agency should 16 have processed Plaintiff's August 15, 17 2011 complaint as a breach claim, 18 rather than a retaliation claim. The 19 EEOC-OFO remanded the case to the 20 Agency to continue processing the 21 complaint as it related to what it 22 interpreted as a breach claim. While 23 this effectively dismissed a portion of 24 Plaintiff's complaint, the EEOC-OFO 25 determined in its November 16, 2012 26 decision that the retaliation and 27 breach claim presented essentially the same question and DHS was ordered to consider whether there was evidence of retaliatory motive in the actions of any personnel involved in the provision of Plaintiff's employment references.</p>

	<p>Support:</p> <ul style="list-style-type: none"> • Exhibit F. • Exhibit J.
<p>11. On July 20, 2012, after receiving 2 EEOC-OFO's May 2012 order on 3 her appeal, Plaintiff submitted a 4 request for reconsideration 5 challenging the Commission's 6 dismissal of her retaliation claim.</p>	<p>Disputed.</p> <p>7 Plaintiff submitted a request for 8 reconsideration challenging the 9 Commissions dismissal of her 10 retaliation claim in its May 1, 2012 11 decision on or around May 31, 2012 12 and not on July 20, 2012. Plaintiff 13 could not have submitted her request 14 on July 20, 2012 as it would have 15 surely been rejected as late. On July 16 20, 2012, Plaintiff submitted an 17 appeal to the EEOC-OFO challenging 18 DHS-OCR's final decision issued on June 19, 2012.</p> <p>Support:</p> <ul style="list-style-type: none"> • Korsunska Decl. ¶¶ 13 and 15. • Exhibit G. • Exhibit I.
<p>19 12. On November 16, 2012, EEOC- 20 OFO issued a decision denying 21 Plaintiff's request for 22 reconsideration. EEOC-OFO 23 specifically addressed and rejected 24 Plaintiff's contention that her 25 retaliation claim should not have 26 been dismissed. EEOC-OFO 27 advised Plaintiff that there was no further right of administrative appeal concerning her retaliation claim and that if she wished to file a district court action, she was</p>	<p>Disputed in Part.</p> <p>Plaintiff does not dispute that on November 16, 2012, the EEOC-OFO issued a decision denying Plaintiff's request for reconsideration. However, rather than completely reject Plaintiff's claim that her retaliation claim should not be dismissed, it determined that the retaliation and breach claim presented essentially the same question and DHS was further ordered to consider</p>

<p>1 required to do so within 90 days. 2 3 4 5 6</p>	<p>7 whether there was evidence of 8 retaliatory motive in the actions of 9 any personnel involved in the 10 provision of Plaintiff's employment 11 references. 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27</p>
<p>13. Plaintiff filed her initial district court complaint ten months later, on September 20, 2013.</p>	<p>Disputed in Part. Plaintiff does not dispute that she filed her initial district court complaint on September 20, 2013. However, Plaintiff disputes that the ninety (90) day clock on her retaliation claim started on November 16, 2012. Rather, it is Plaintiff's contention that she had the right, and was actually required to wait until the Agency finished processing her entire complaint (including the breach claim) before filing a civil action on her retaliation claim. On June 19, 2012, DHS-OCR issued a final decision determining that Plaintiff's breach claim was untimely. On July 20, 2012, Plaintiff appealed the DHS-OCR's final decision on her August 15, 2011 complaint. Plaintiff received the EEOC-OFO's final decision on her appeal on July 23, 2013. Plaintiff's complaint was filed eighty-nine (89) days from June 23, 2013. Support: <ul style="list-style-type: none"> • Korsunski Decl. ¶¶ 18 – 19. • Exhibits H, I, K and L. </p>

	<ul style="list-style-type: none"> • Complaint [Docket No. 1].
UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
<p>14. Plaintiff initiated the EEO administrative process for her August 15, 2011 formal complaint on July 8, 2011 when she contacted USCIS EEO upon finding a May 27, 2011 email from the SSA informing her that she was not selected for positions.</p>	<ul style="list-style-type: none"> • Exhibit E: Indicating that Plaintiff initiated contact with an EEO Counselor in July 2011. Note that the date listed is incorrect, as Plaintiff initiated contact on July 8, 2011. • Korsunskas Decl. at ¶ 8. • Exhibit D: Indicating at box 19 that Plaintiff contacted an EEO counselor on July 8, 2011.
<p>15. In the May 1, 2012 decision, the EEOC-OFO reversed the December 2, 2012 decision from the DHS-OCR and remanded the case back to the Agency to process Plaintiff's claim as a complaint for breach of agreement. The EEOC-OFO advised that Plaintiff could request a reconsideration of its decision or could terminate the administrative processing of her complaint by filing a civil action.</p>	<ul style="list-style-type: none"> • Exhibit F.
<p>16. On or around May 31, 2012, Plaintiff submitted a request for reconsideration to the EEOC-OFO's challenging its May 1, 2012 decision to re-characterize (dismiss) her retaliation claim.</p>	<ul style="list-style-type: none"> • Korsunskas Decl. at ¶ 13. • Exhibit G.
<p>17. The EEOC-OFO issued its decision on Plaintiff's request for reconsideration on November 16, 2012. In that decision, the EEOC-</p>	<ul style="list-style-type: none"> • Exhibit J (see also footnote 1).

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	<p>OFO note that the arguments asserted by Plaintiff - that the Agency breached the settlement agreement with regard to employment references, and that the Agency retaliated against her with regard to employment references - presented essentially the same question for determination. Further, the EEOC-OFO directed the Agency to "consider whether there is evidence of retaliatory motive in the actions of any personnel involved in the provision of [Plaintiff's] employment references." The EEOC-OFO advised Plaintiff that its order was one requiring the Agency to continue its administrative processing of her August 11, 2015 complaint and that she could terminate the administrative processing of her complaint by filing a civil action.</p>
18.	<p>On July 20, 2012 Plaintiff submitted an appeal with the EEOC-OFO challenging the DHS-OCR's June 19, 2012 final decision on her August 15, 2011.</p> <ul style="list-style-type: none">• Korsunskaya Decl. at ¶ 15.• Exhibit I.
19.	<p>On June 19, 2013, the EEOC-OFO issued its decision affirming the DHS-OCR's June 19, 2012 final decision on Plaintiff's August 15, 2011 formal complaint.</p> <ul style="list-style-type: none">• Exhibit K.
20.	<p>Plaintiff received the EEOC-OFO's final decision on June 23, 2013.</p> <ul style="list-style-type: none">• Korsunskaya Decl. at ¶ 19.• Exhibit I: Indicating that Plaintiff received the DHS-OCR's decision on June 23, 2013.

1 21. Plaintiff filed her initial district
2 court complaint within ninety (90)
3 days from receipt of the June 19,
4 2013 EEOC-OFO final decision.

• **Complaint** [Docket No. 1].

5 DATED: JULY 3, 2014

6 SOUTHWORTH PC

7 /s/ Terina M. Williams
8 TERINA M. WILLIAMS
9 Attorney for Plaintiff

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27